CITY OF SANTA BARBARA

92-258

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Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

To: The Commission

The FCC is currently considering procedures for implementing the Cable Television Consumer Protection and Competition Act of 1992. One of the provisions of that Act concerns "indecent programming on cable access channels". The National League of Cities, et al have filed a comment concerning these provisions. The City of Santa Barbara concurs with these comments.

However, one provision of the 1992 Act with respect to these matters was not discussed in the enclosed comments. The Act includes language that permits cable operators to prohibit access channels from carrying "obscene material, sexually explicit conduct, or material soliciting or promoting unlawful conduct". The underlined phrase is the phrase that concerns us. Taken literally, this clause could permit cable operators to ban advocacy of civil disobedience or material that might challenge existing laws. On the other hand, since the clause appears in the context of a provision on obscenity and indecency and therefore may have been intended to refer only to that domain.

This phrase as written is ambiguous and contains possibly serious threats to freedom of expression. We urge that the FCC modify this phrase to provide a clear--and circumscribed--interpretation of it.

Sincerely,

Sheila Lodge

Sheila Lodge
Mayor, City of Santa Barbara

Enclosure

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
Implementation of the Cable Television Consumer Protection and Competition Act of 1992	MM Docket No. 92-258
Indecent Programming on Cable Access Channels	

TO: The Commission

COMMENTS OF THE
NATIONAL ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS, NATIONAL LEAGUE OF CITIES, UNITED STATES CONFERENCE OF MAYORS, AND THE NATIONAL ASSOCIATION OF COUNTIES

The National Associa ion of Telecommunications Officers and Advisors, the ! ational League of Cities, the United States Conference of Mayors, and the National Association of Counties (collectively, "the Local Governments") submit these comments in the above-captioned proceeding.

I. INTRODUCTION

The Federal Communications Commission ("FCC" or "Commission") seeks comment on implementation of Section 10 of the Cable Television Consumer Protection and

Competition Act of 1992 ("1992 Act"). Section 10 permits cable operators to prohibit indecent programming on the leased access channels on their systems, and eliminates cable operators' statutory exemption from liability for programming on access channels that involves obscene material. Section 10 also directs the FCC to promulgate regulations "designed to limit the access of children to indecent programming ... which cable operators have not voluntarily prohibited," and to enable cable operators to prohibit the use of any public, educational, or governmental ("PEG") access channel "for any programming which contains obscene material, sexually explicit conduct, or material soliciting or promoting unlawful conduct."

The Local Governments concur in the Commission's interpretation that the primary responsibility for identifying obscene material under Section 10 should be placed on programmers of leased and PEG access channels, rather than on cable operators. The programmer has the best knowledge of the content of the programs on access channels, and the cable operator should not be permitted -- much less required -- to censor programming on PEG or leased channels. Accordingly, the Local Governments support the Commission's proposal which would allow cable operators to require programmers to identify obscene

programming and to certify that all other programming does not contain obscene or indecent material.

The Local Governments submit, however, that the unique role of PEG channels in providing important programming in the public interest and encouraging the free flow of information among all segments of the community should be taken into account with respect to regulations governing responsibilities of providers of programming for PEG access channels. In particular, considerations of administrative ease and the prevalence of live programming on PEG access channels should support modification of the Commission's proposed rules concerning certification by PEG program providers.

II. DISCUSSION

A. PEG Access Channels

PEG access channels perform the vital function of ensuring that a diverse range of programming in the public interest from diverse sources is provided on cable systems. Many franchises regularly provide for one or more governmental channels which may be programmed by a government-related entity or government agency; educational channels, which may be programmed by one or more local institutions of higher learning or the local school system; and public access channels, which may be

available for distribution of programming by the public on a first-come, first-served basis. Governmental channels carry such programming as local government meetings and deliberations, school board meetings, community events, citizen forums on current events, job bulletin boards, and information on availability of government services. Educational channels may provide primarily educational and informational programming, in many cases at no cost to the viewer. The public access channels are often managed by a public access organization, independent of the local franchising authority, that establishes and administers rules for the distribution of programming by the public. The unique nature and important function of PEG channels has been recognized by Congress:

> Public access channels are often the video equivalent of the speaker's soap box or the electronic parallel to the printed leaflet. They provide groups and individuals who generally have not had access to the electronic media with the opportunity to become sources of information in the electronic market-place of ideas. PEG channels also contribute to an informed citizenry by bringing local schools into the home, and by showing the public local government at work.

H.R. Rep. No. 98-934, 98th Cong., 2d Sess. 30 (1984).

Given the wide array of PEG programming and the potential administrative burdens of requiring programmers to provide, on a program-by-program basis, certification

that certain programming does not contain obscene material -- particularly when a substantial amount of the programming on PEG channels is live, the Local Governments urge the Commission to modify its proposed rules with respect to certification by PEG program providers in certain important respects.

First, the Local Governments urge the FCC to adopt regulations that would allow programmers to certify their programs on as broad a basis as the programmers deem appropriate. For example, a programmer could choose to provide a blanket, rather than program-by-program, certification that its programs do not contain obscene material. Such certification could be renewed annually, and would allow cable operators to place primary responsibility on programmers for ensuring that programs containing obscene material are not aired on the PEG access channels -- without unduly burdening the administrative capabilities of those responsible for public interest programming.

Second, the Local Governments submit that some programming on PEG access channels, particularly live programming, is not amenable to prior certification as to its content. The Local Governments therefore urge the FCC to modify its regulations governing certification by PEG access providers. Such regulations would allow

programmers of live formats to certify that they have exercised reasonable efforts to ensure that their programs will not contain obscene or otherwise proscribed material. This "reasonable efforts" certification should apply generally to various PEG formats because of the unique nature of PEG access programming.

Finally, the FCC has suggested that disputes between cable operators and programmers of PEG access channels should be resolved by franchising authorities at the local level. The Local Governments believe that a better approach would be for such disputes to be resolved in the judicial system. Such disputes ultimately will be resolved in the judicial system; requiring franchising authorities to mediate such disputes merely will add an additional, inefficient step to resolution of disputes of the constitutional issues that inevitably will be decided by courts. This is especially true in connection with the PEG access channels, where the franchise authority may be the programmer, the editor or the facilitator.

B. Leased Access Channels

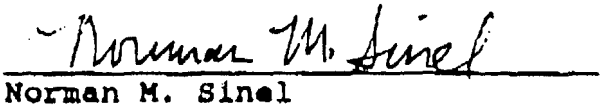
The Local Governments agree with the Commission's approach with respect to programming on leased access channels. Programmers, rather than cable operators, should bear the primary responsibility for identifying programs containing obscene material and for certifying

that programs not so identified do not contain obscene material. The Local Governments furthermore support existing law providing that lock boxes shall be available to block access to cable services; nothing in the 1992 Act alters this existing law or mandates that lock boxes should be available only to block programming on the single leased access channel containing indecent programming. Many subscribers may wish to block programming on other channels. The 1984 Cable Act is quite specific in requiring the availability of lock boxes; this requirement should be enforced strictly. 47 U.S.C. § 544(d)(2)(A).

III. CONCLUSION

The Local Governments believe that the Commission's approach is sound with respect to implementing Section 10 of the 1992 Act. The Commission should take special care, however, to accommodate the unique public interest and administrative concerns of program providers for PEG access channels by allowing such providers to make blanket, rather than program-by-program certifications, make only "reasonable effort" certifications with respect to live programming not amenable to prior certifications, and have disputes with cable operators resolved in the first instance by the judicial system.

Respectfully submitted,



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